

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARC S. KIRSCHNER,
as Trustee of the Refco Private Actions Trust,

Plaintiff,

v.

PHILLIP R. BENNETT, SANTO C. MAGGIO,
ROBERT C. TROSTEN, MAYER, BROWN,
ROWE & MAW LLP, GRANT THORNTON LLP,
and ERNST & YOUNG US LLP,

Defendants.
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Case No. 07 Civ. 8165 (GEL)

DECLARATION OF
THOMAS G. WARD IN
SUPPORT OF DEFENDANT
MAYER BROWN LLP'S
MOTION TO DISMISS

I, THOMAS G. WARD, declare as follows:

1. I am a partner of the law firm of Williams & Connolly LLP, attorneys for Defendant Mayer Brown LLP in the above-captioned matter, and a member in good standing of the bar of this Court. I submit this declaration in support of Defendant Mayer Brown LLP's Motion to Dismiss in the above-captioned matter.

2. Attached hereto as Exhibit 1 is a true and correct copy of a diagram created by Defendant Mayer Brown LLP of the "round-trip loan transactions" as alleged in the Complaint.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Modified Joint Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries (without exhibits or schedules), dated December 26, 2006, filed in *In re Refco Inc., et al.*, 05-60006 (Bankr. S.D.N.Y.).

4. Attached hereto as Exhibit 3 is a true and correct copy of Exhibit K to the Modified Joint Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries,

dated December 26, 2006, filed in *In re Refco Inc., et al.*, 05-60006 (Bankr. S.D.N.Y.) styled “Non-Exclusive List of Retained Actions” with Appendices.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Complaint, dated August 21, 2007, filed in *Kirschner v. Grant Thornton, et al.*, 07 Civ. 11604 (S.D.N.Y.).

6. Attached hereto as Exhibit 5 is a true and correct copy of Exhibit F to the Modified Joint Chapter 11 Plan of Refco Inc. and Certain of Its Direct and Indirect Subsidiaries, dated December 26, 2006, filed in *In re Refco Inc., et al.*, 05-60006 (Bankr. S.D.N.Y.) styled “The Refco Litigation Trust Agreement.”

7. Attached hereto as Exhibit 6 is a true and correct copy of the Bankruptcy Court’s Judgment and relevant portions of the transcript of oral arguments held in *Kirschner v. Bencorp Casa de Bolsa, C.A. (In re Refco Inc.)*, Adv. Proc. No. 06-01745 (Bankr. S.D.N.Y. Dec. 29, 2006).

8. Attached hereto as Exhibit 7 is a true and correct copy of a Refco Capital Markets customer statement for customer ESAF-Fundos de Pensoes S.A., dated February 28, 2003 (REFCO-E-001611352-62).

9. Attached hereto as Exhibit 8 is a true and correct copy of a Refco Capital Markets customer statement for customer Finnval Maritime Ltd., dated February 28, 2002 (REFCO-0008-052161-75).

10. Attached hereto as Exhibit 9 is a true and correct copy of a Refco Capital Markets customer statement for customer Stratford Trading LLC, dated February 28, 2002 (REFCO-0008-052318-23).

11. Attached hereto as Exhibit 10 is a true and correct copy of a Refco Capital Markets customer statement for customer Yamazen Shoji Co., Ltd., dated February 28, 2002 (REFCO-0008-052460-507).

12. Attached hereto as Exhibit 11 is a true and correct copy of a Refco Capital Markets customer statement for customer Anselan S.A., dated February 28, 2001 (REFCO-E-013751127-38).

13. Attached hereto as Exhibit 12 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated February 9, 2007, filed in *Kirschner v. UBAE Arab Italian Bank*, Adv. Proc. No. 07-01475 (Bankr. S.D.N.Y.).

14. Attached hereto as Exhibit 13 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated February 9, 2007, filed in *Kirschner v. Metallinvestbank JSCB*, Adv. Proc. No. 07-01476 (Bankr. S.D.N.Y.).

15. Attached hereto as Exhibit 14 is a true and correct copy of the Order Granting Motion to Dismiss Without Prejudice, dated October 12, 2007, filed in *Kirschner v. Metallinvestbank JSCB*, Adv. Proc. No. 07-01476 (Bankr. S.D.N.Y.).

16. Attached hereto as Exhibit 15 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfer, dated February 9, 2007, filed in *Kirschner v. GAIN Capital, Inc.*, Adv. Proc. No. 07-01477 (Bankr. S.D.N.Y.).

17. Attached hereto as Exhibit 16 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated February 9, 2007, filed in *Kirschner v. Aska Futures Co., Ltd.*, Adv. Proc. No. 07-01478 (Bankr. S.D.N.Y.).

18. Attached hereto as Exhibit 17 is a true and correct copy of the Stipulation and Order, dated August 15, 2007, filed in *Kirschner v. Aska Futures Co., Ltd.*, Adv. Proc. No. 07-01478 (Bankr. S.D.N.Y.).

19. Attached hereto as Exhibit 18 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated February 9, 2007, filed in *Kirschner v. Tokyo Forex Financial, Inc.*, Adv. Proc. No. 07-01479 (Bankr. S.D.N.Y.).

20. Attached hereto as Exhibit 19 is a true and correct copy of the Stipulation and Order, dated August 15, 2007, filed in *Kirschner v. Tokyo Forex Financial, Inc.*, Adv. Proc. No. 07-01479 (Bankr. S.D.N.Y.).

21. Attached hereto as Exhibit 20 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated February 9, 2007, filed in *Kirschner v. Alphix Co., Ltd.*, Adv. Proc. No. 07-01480 (Bankr. S.D.N.Y.).

22. Attached hereto as Exhibit 21 is a true and correct copy of the Notice of Dismissal with Prejudice, dated September 19, 2007, filed in *Kirschner v. Alphix Co., Ltd.*, Adv. Proc. No. 07-01480 (Bankr. S.D.N.Y.).

23. Attached hereto as Exhibit 22 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated February 16, 2007, filed in *Kirschner v. Reifler Capital Advisors LLC & Bradley C. Reifler*, Adv. Proc. No. 07-01500 (Bankr. S.D.N.Y.).

24. Attached hereto as Exhibit 23 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfer, dated March 26, 2007, filed in *Kirschner v. Nikko Futures Fund, & Total Alpha Investment Fund Management Company S.A.*, Adv. Proc. No. 07-01645 (Bankr. S.D.N.Y.).

25. Attached hereto as Exhibit 24 is a true and correct copy of the Proposed Agenda for Hearing Scheduled for May 13, 2008, at 10:00 A.M., dated May 12, 2008, reflecting on page 15 the Settlement of *Marc S. Kirschner v. Nikko Futures Fund, & Total Alpha Investment Fund Management Company S.A.*, Adv. Proc. No. 07-01645 (Bankr. S.D.N.Y.), filed in *In re Refco Inc., et al.*, 05-60006 (Bankr. S.D.N.Y.).

26. Attached hereto as Exhibit 25 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated March 26, 2007, filed in *Kirschner v. RPM Trading Ltd.*, Adv. Proc. No. 07-01646 (Bankr. S.D.N.Y.).

27. Attached hereto as Exhibit 26 is a true and correct copy of the Complaint (A) To Avoid Transfers Pursuant, to 11 U.S.C. §§544(B), 547 and 548, (B) To Recover Property Transferred, Pursuant to 11 U.S.C. §550 and (C) Objecting To the Allowance of Claims Pursuant to 11 U.S.C. §502(D), dated October 12, 2007, filed in *Kirschner v. 2B Investments Ltd.*, Adv. Proc. No. 07-03017 (Bankr. S.D.N.Y.).

28. Attached hereto as Exhibit 27 is a true and correct copy of the Notice of Dismissal, dated December 3, 2007, filed in *Kirschner v. 2B Investments Ltd.*, Adv. Proc. No. 07-03017 (Bankr. S.D.N.Y.).

29. Attached hereto as Exhibit 28 is a true and correct copy of the Complaint To Avoid and Recover Preferential Transfers, dated October 15, 2007, filed in *Kirschner v. Metallinvestbank JSCB*, Adv. Proc. No. 07-03026 (Bankr. S.D.N.Y.).

30. Attached hereto as Exhibit 29 is a true and correct copy of the Notice of Settlement, Disallowance of Claim No. 10887 and Dismissal with Prejudice of Adversary Proceeding, dated November 13, 2007, filed in *Kirschner v. Metallinvestbank JSCB*, Adv. Proc. No. 07-03026 (Bankr. S.D.N.Y.).

31. Attached hereto as Exhibit 30 is a true and correct copy of email correspondence from Joseph P. Collins to Thomas Yorke, carbon copied to Santo Maggio, dated January 25, 2005 (MB02173877-78).

32. Attached hereto as Exhibit 31 is a true and correct copy of a draft memorandum from Joseph Collins and Ross Pazzol to Stephen Keating, dated October 11, 2005 (MB02441374-80).

33. Attached hereto as Exhibit 32 a true and correct copy of an email from Joseph P. Collins to Santo C. Maggio, Dennis A. Klejna, and Stephen Keating dated June 24, 2002, attaching a draft memorandum also dated June 24, 2002 (REFCO-E-002464308-12).

34. Attached hereto as Exhibit 33 is a true and correct copy of a facsimile from Martha Blonder to Edward Black and Joseph Collins, dated January 31, 1999 (MB02035944).

35. Attached hereto as Exhibit 34 is a true and correct copy of a document titled *Definitions Related to Financial Covenants* with handwritten notes, dated June 20, 2004 (MB02011869-70).

36. Attached hereto as Exhibit 35 is a letter from Phillip Bennett to Joseph P. Collins, Esq., with attachments and handwritten notes, dated October 15, 1999 (MB02071243-58).

37. Attached hereto as Exhibit 36 is a true and correct copy of the June 2002 Letter Agreement dated June 11, 2002 (MB02068524-27).

38. Attached hereto as Exhibit 37 is a true and correct copy of an article titled "JP Morgan Shares Down After Financing Bear Stearns; Analysts Back Ratings" printed from <http://www.forbes.com/afxnewslimited/feeds/afx/2008/03/14/afx4775498.html>.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: Washington, D.C.
June 6, 2008

A handwritten signature in black ink, appearing to read "Thomas G. Ward". The signature is fluid and cursive, with the first name "Thomas" being more prominent.

Thomas G. Ward (TW-6255)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000

Attorney for Defendant Mayer Brown LLP